

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES MULLEN and KARL SCHMIDT,

Plaintiffs,

5:10-CV-1110

-against-

ATTORNEY'S AFFIRMATION

THE CITY OF SYRACUSE, STEPHANIE
A. MINER, in her individual and official capacity
as Mayor of The City of Syracuse; FRANK L.
FOWLER, in his individual and official capacity as
Chief of Police for The City of Syracuse; JUDY
CULETON, in her individual and official capacity
as Director of the Human Resources Division of the
Syracuse Police Department, and JOHN and JANE
DOES,

Defendants.

A.J. Bosman, Esq., an attorney duly licensed to practice law in the courts of the State of New York and in the United States District Court for the Northern District of New York, affirms the following statements to be true under the penalties of perjury:

1. I am the attorney for the Plaintiffs James Mullen and Karl Schmidt in the above-referenced matter.
2. I make this affirmation in opposition to the Defendants' motion to dismiss and in support of Plaintiffs' cross-motion to amend their Complaint.
3. This action was commenced on September 16, 2010. See Dkt. No. 1.
4. Defendants entered an appearance on September 22, 2010 (See Dkt. No. 4) and thereafter filed a motion to dismiss on October 8, 2010. See Dkt. No. 5.
5. The sole basis for the Defendants' aforementioned motion is their contention that their

actions were “random and unauthorized”. See Defs.’ Memo. of Law dated Oct. 8, 2010, p. 3.

6. The argument is unsupported and contrary to the allegations in the Plaintiffs’ Complaint.

7. Upon information and belief, the Defendants’ actions were neither “random” nor “unauthorized”. The Defendants’ motion to dismiss should therefore be denied.

8. Upon receipt of Defendants’ motion claiming their actions were “random and unauthorized”, I immediately contacted Defendants’ counsel to resolve the matter without success. (Exhibit A, attached hereto).

9. The letter I received back from Assistant Corporation Counsel Savion is evasive. (Exhibit B, attached hereto). I subsequently had a telephone conversation with Ms. Savion and she refused to back up her assertions with any fact. Upon information and belief, Defendants’ argument in support of their motion to dismiss is a sham and plainly false.

10. Plaintiffs seek to amend the Complaint to allege that: “The City of Syracuse has no policy or procedure in place by which disabled Police Officers may challenge the suspension or termination of treatment and/or payment of medical expenses deemed necessary by their treating medical providers.” Pls.’ Prop. Am. Compl., ¶ 24.

11. Plaintiffs also seek to amend their Complaint to allege that, upon information and belief, final policy-making authority with respect to the suspension or termination of § 207-c benefits rests with the Defendant Chief of Police. See, Pls.’ Prop. Am. Compl., ¶ 22. Additionally, the Proposed Amended Complaint alleges that, upon information and belief, final policy-making authority with respect to the payment of § 207-c rests with either the Mayor and/or Chief of Police. *Id.*, ¶ 23. It is early in litigation and no discovery has taken place. It is not improper to allege these facts “upon information and belief”. See Pls.’ Memo. of Law dated November 23, 2010, p. 6.

12. A proposed amended complaint is attached in compliance with L.R. 7.1(a)(4).

13. Rule 15(a)(2) of the Federal Rules of Civil Procedure provides, in pertinent part: “The court should freely give leave when justice so requires.”

14. Plaintiffs’ amendment should be allowed as their claims are meritorious, they have acted diligently in seeking the amendment, and there is no prejudice to the Defendants.

WHEREFORE, Defendants’ motion to dismiss Plaintiff’s Complaint should be denied and Plaintiffs’ motion for leave to file an Amended Complaint should be granted in its entirety together with such other and further relief the Court deems just and proper.

s/A.J. Bosman
A.J. Bosman

Dated: November 23, 2010
at Rome, New York